

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Chapter 7 Case
BONNIE L. WILLIAMSON)	
)	Number <u>96-41777</u>
<i>Debtor</i>)	

**ORDER ON MOTION TO ALLOW AMENDED CLAIM OF
P & H ENTERPRISES**

On January 27, 1997, Movant, P & H Enterprises, filed the above Motion to Allow Amended Claim. On April 1, 1997, this Court held a hearing at which time Debtor objected to the status of Movant's claim as amended. The matter was taken under advisement at the close of the hearing. Pursuant to Bankruptcy Rule 7052, this Order constitutes the Court's findings of fact and conclusions of law.

FINDINGS OF FACT

On July 19, 1996, Debtor filed Chapter 13 bankruptcy. At that time, Debtor was leasing a mobile home from P & H Enterprises and within her plan proposed to assume the lease agreement. Debtor subsequently defaulted pre-confirmation and on November 24, 1996, consented to a Motion for Relief brought by P & H to proceed against

the mobile home. After Debtor vacated the mobile home, P & H amended its claim to include an administrative expense for the Debtor's post-petition occupancy of the mobile home. As amended, P & H requested an unsecured claim of \$960.00 resulting from pre-petition arrearage minus a security deposit and an administrative claim of \$2,097.75 resulting from post-petition arrearage, minor repairs, and clean-up expenses. After hearing the evidence, I allowed the unsecured claim to which there was no objection and reduced the post-petition expense claim to \$1,497.15.¹

The sole issue before this Court is whether to classify the post-petition claim of P & H Enterprises as an administrative priority claim or unsecured. In support of its position, P & H cites Sections 365(g) and 502(b)(6) which concern the breach of an assumed lease and damages arising from its rejection. P & H also contends that pursuant to Section 503(b)(1)(A) this claim should be classified as an administrative expense being an "actual, necessary cost[s] and expense[s] of preserving the estate." In opposition, Debtor contends Section 503(b)(1)(A) is inapplicable because any benefit derived from Debtor's post-petition occupancy benefitted the Debtor and not the estate. Debtor cites In re Rowland Scott, III, Ch. 13 Case No. 96-20774, slip op. (Bankr.S.D.Ga., March 3, 1997) (Walker, J.)

¹ After considering the evidence concerning the extent of the repairs, the repair expense was reduced by \$105.00 and the cleaning charge disallowed completely as an expense of the landlord. Moreover, the claim for rent was reduced by \$100.00/month because the landlord failed to fix the air conditioning during the period in question.

CONCLUSIONS OF LAW

In pertinent part, Section 365(g)(1) and (2) provide that the rejection of an executory contract or unexpired lease constitutes a breach,

(1) if such contract or lease has not been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title, immediately before the date of the filing of the petition; or

(2) if such contract or lease has been assumed under this section or under a plan confirmed under chapter 9, 11, 12, or 13 of this title--

(A) if before such rejection the case has not been converted under section 1112, 1208, or 1307 of this title, at the time of such rejection

(emphasis added).

When interpreting Sections 365(g), courts often grant administrative priority status to Chapter 13 claims arising from a post-assumption breach of a lease or executory contract. *See In re Hall*, 202 B.R. 929, 938 (Bankr.W.D.Tenn. 1996) (granting claim of landlord administrative priority after Chapter 13 debtor assumed lease through confirmed plan and then subsequently rejected). In the present case, however, although the lease was rejected post-petition and although the Debtor initially proposed assuming the lease as part of her plan, the lease was rejected pre-confirmation and prior to assumption. Because no court order exists approving an assumption of the lease, Section 365(g) does

not provide authority from which to classify the claim of P & H Enterprises as administrative priority.

In pertinent part, Section 503(b)(1) provides,

(b) . . . there shall be allowed administrative expenses, including--

(1)(A) the actual, necessary costs and expenses of preserving the estate . . .

A decision to grant a claim administrative status pursuant to Section 503(b) is within the discretion of the trial court. *See In re Rowland Scott, III*, at 13, *citing In re Verco Indus.*, 20 B.R. 664 (B.A.P. 9th Cir. 1982). That discretion is limited by the Eleventh Circuit's holding that "'there must be an actual, concrete benefit to the estate before a claim is allowable . . . ' as an administrative expense." *In re Subscription Television of Greater Atlanta*, 789 F.2d 1530, 1532 (11th Cir. 1986) (Bowen, J.) *citing Broadcast Corp. v. Broadfoot*, 54 B.R. 606, 613 (N.D.Ga. 1985).

Although the opinion in *Scott, supra*, states "it is difficult to envision a situation where such a rental expense would qualify as an actual and necessary cost of preserving the bankruptcy estate," *see Id* at 17, after reviewing the applicable Code provisions and case law, it appears that such a broad proposition may not be that clear-cut.

As recited in Judge Walker's Order, 503(b) actual benefits often are found in Chapter 7 cases where a lease enables the estate's collateral to be preserved or in Chapter 11 instances where a rental expense is necessary to continue the business operation. Id. at 16. Although Scott did not discuss benefits typically conferred on a Chapter 13 Debtor's estate, instances certainly appear to exist where a Chapter 13 estate receives actual benefits from unassumed leases. In fact, there may be greater actual benefit which may accrue in favor of a Chapter 13 estate because it includes not only property specified in Section 541 of title 11, but also "all property . . . that the debtor acquires after the commencement of the case" and "earnings from services performed by the debtor after the commencement." 11 U.S.C. Section 1306(a)(1) and (2). Thus, when an unassumed lease directly contributes to either property or earnings acquired post-petition, the estate receives an actual benefit above and beyond any incidental benefit such as a secure place to live.

For example, in the context of a residential lease, suppose that a typical debtor spends \$500/month on rent. Now, consider a debtor whose lease is for less than fair market value, as are many HUD homes, or a debtor who leases his residence for \$500, but operates part or all of his business out of his home. In both instances, the Chapter 13 estate derives a clear benefit from the lease by an amount equal to any increase in Debtor's disposable income directly attributable to the residential lease. Regardless of whether the breach occurs post-assumption, if a debtor defaults and the estate has received an actual benefit a creditor should be permitted to recover that amount as an administrative expense.

This analysis is not limited to residential leases. Often, in Chapter 13 cases, a debtor intends to assume a car lease and then surrenders the vehicle prior to assumption. If the vehicle is used in a manner that facilitates the debtor's business, then the amount of any actual benefit derived by the estate should be considered an administrative expense upon rejection. An actual benefit may be shown in a number of ways as long as a sufficient nexus exists between the debtor's estate and benefit conferred. For example, in the context of vehicle leases, a creditor might only have to show that the vehicle was used while the debtor was engaged in business or that a debtor could not be engaged in business without the vehicle as a result of commuting requirements of a job.

In sum, while the evidentiary burden of demonstrating administrative priority remains with the creditor, it is not inconceivable that instances exist where a Chapter 13 estate receives a direct and actual benefit from an unassumed residential or vehicle lease. Of course, a court should remain mindful that the mere possibility of any kind of benefit does not rise to the level of an administrative expense. Ford Motor Credit Co. v. Dobbins, 35 F.3d 860, 866 (4th Cir. 1994). Furthermore, the inquiry focuses on whether the estate received "actual benefit," not whether the creditor experienced a loss due to debtor's possession of its property. See In re Jovay, 205 B.R. 85, 86 (Bankr.E.D.Tex. 1997).

In the present case, creditor, P & H Enterprises, failed to prove more than

an incidental benefit to the estate. Although the evidence revealed that Debtor occupied the premises for approximately four months before abandoning the property, P & H failed to show an "actual benefit," such as an economic benefit derived from the lease by Debtor's business or a significant discrepancy between the lease and the fair market value of other properties. While four months of post-petition rent is certainly a substantial benefit conferred on the Debtor, the Bankruptcy Code only recognizes as administrative priority claims actual benefits conferred on the Debtor's estate. Accordingly, Debtor's objection is sustained and the Trustee shall reclassify P & H's total claim as unsecured in the amount of \$2,457.15 (\$960.00 + \$1,497.15).

O R D E R

Pursuant to the foregoing Findings of Fact and Conclusions of Law, IT IS THE ORDER OF THIS COURT that Debtor's Objection to the claim of P & H Enterprises is sustained.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This _____ day of June, 1997.